

SENATE BILL 398

By Haynes

AN ACT to amend Tennessee Code Annotated, Section 20-12-127 and Title 41, Chapter 21, relative to inmate litigation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 41, Chapter 21, is amended by adding the following as a new, appropriately designated part:

41-21-\_\_\_\_. (a)(1) Subject to subsection (b), any court of the state of Tennessee may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such inmate possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) An inmate seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under subdivision(a)(1), shall submit a certified copy of the trust fund account statement for the inmate for the six (6) month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each facility at which the inmate is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if an inmate brings a civil action or files an appeal in forma pauperis, the inmate shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent (20%) of the greater of:

(A) the average monthly deposits to the inmate's account; or

(B) the average monthly balance in the inmate's account for the six (6) month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent (20%) of the preceding month's income credited to the inmate's account. The agency having custody of the inmate shall forward payments from the inmate's account to the clerk of the court each time the amount in the account exceeds ten dollars (\$10.00) until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall an inmate be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the inmate has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the state of Tennessee of the expenses of (1) printing the record of appeal in any civil or criminal case, if such printing is required by the appellate

court; (2) preparing a transcript of proceedings before a judge in any civil or criminal case, if such transcript is required by the court; and (3) printing the record on appeal if such printing is required by the appellate court. Such expenses shall be paid when authorized by the administrative office of the courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witness shall attend as in other cases, and the same remedies shall be available as are provided for by the law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the state of Tennessee shall not be liable for any of the costs thus incurred. If the state of Tennessee has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the state.

(2)(A) If the judgment against an inmate includes the payment of costs under this subsection, the inmate shall be required to pay the full amount of the costs ordered.

(B) The inmate shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall an inmate bring a civil action or appeal a judgment in a civil action or proceeding under this section if the inmate has, on three (3) or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the state of Tennessee that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the inmate is under imminent danger of serious physical injury.

(h) As used in this section, the term "inmate" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

41-21-\_\_\_\_. This part may be considered an alternative procedure to the procedure set out in Title 41, Chapter 21, Part 8. A court may use either the procedure set out in this part or the procedure set out in Title 41, Chapter 21, Part 8, but not both.

SECTION 2. This act shall take effect July 1, 2001, the public welfare requiring it.